A.F.R.

24-04-2006

77

**HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH**

---

**SINGLE BENCH: HON'BLE SHRI S.R. NAYAK, CJ.**

---

**WRIT PETITION NO.1917 OF 1998**

# O R D E R

Post for pronouncement
of the order : **24/04/2006**

Sd/-
Chief Justice

A.F.R.

24-04-2006



78

**HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH**

---

**SINGLE BENCH: HON'BLE SHRI S.R. NAYAK, CJ.**

---

**WRIT PETITION NO.1917 OF 1998**

**PETITIONER** Hira Industries Limited, a Public Limited Company duly registered under the Companies Act, 1956, having its Registered Office at 572-Urla Industries Area, Urla, Raipur (M.P.)

Vs.

**RESPONDENTS**

1. State of C.G.
   Through : its Secretary, Department of Finance, Govt. of C.G., D.K.S. Bhavan, Raipur.
2. The Secretary, Departrment of Commerce & Industries, D.K.S. Bhavan, Raipur.
3. The Commissioner of Industries, Departrment of Commerce & Industries, Raipur.
4. General Manager, District Industries Centre, Jagdalpur, Bastar, C.G.

---

**Present:** Mr. B.P. Sharma, learned counsel for the petitioner.
Mr. Yashwant Singh, learned Govt. Advocate for the State.

---

**O R D E R**
**(Passed on 24 of April, 2006)**

The petitioner, Hira Industries Limited, which is a public limited company, registered under the Companies Act, 1956 having its registered office at 572-Urla Industries Area, Urla, Raipur, Chhattisgarh State, being aggrieved by the action of the Government of Chhattisgarh and its authorities, the respondents herein, in not releasing the transport subsidy payable to them under the "Madhya Pradesh Transport Subsidy Scheme", has filed this writ petition.

**(2)** The facts of the case, in brief, are as follows:

The petitioner-Company is engaged in manufacture and production of cement. The petitioner-Company was initially doing its

business in the name and style of "Jai Bajrang Cement Pvt. Ltd.". That name of the petitioner-Company was subsequently changed as Hira Industries Ltd. in the year 1991. The districts of Bastar and Surguja in the undivided State of Madhya Pradesh and now part of the newly-formed Chhattisgarh State are industrially most backward districts having mainly tribal population. The Government with a view to promote and develop these districts industrially through its Department of Commerce and Industries, in the year 1978, floated a scheme called "Transport Subsidy Scheme" (TSS) dated 01-04-1978 to promote establishment of industrial units in Bastar and Surguja districts. For establishment of industrial units the basic amenities like raw-materials and transport facilities by Rail were not available in these districts. The Government, therefore, under the TSS promised to provide subsidy on transportation charges. This was done as an incentive to the industrial units if they are established in the backward areas. In terms of the TSS, the transportation charges which were incurred by the Industrial Units for a distance between the Industrial Unit and the Railway Head are to be reimbursed by respondents 2 to 4 – Authorities. The petitioner – Company taking advantage of the TSS and incentive offered by the respondents established its Cement Plant in Pandripani village, Tahsil Jagdalpur, District Bastar, and the nearest Railway Head under the TSS as mentioned in clause (4) of Rule 6 of the Rules for Transportation Subsidy Scheme is Raipur.

**(3)** The petitioner's Unit commenced its commercial production on 18-10-1986. After commencement of commercial production, the petitioner – Company was eligible for transport subsidy for a period of five years, that is to say, up to 17-10-1991, as per the TSS Rules. After

commencement of the commercial production, the petitioner – Company raised its claim for transport subsidy before the respondents 2 to 4. Initially, the respondents 2 to 4 released the amount of transport subsidy in part and that too only in respect of goods transported within the undivided State of Madhya Pradesh. The petitioner – Company under the circumstance made a representation to the General Manager, District Industries Centre, Jagdalpur, the 4th respondent herein, for release of subsidy for transportation of goods outside the State also. The 4th respondent, having appreciated the legitimate claim of the petitioner – Company, recommended to the Commissioner, Department of Commerce and Industries, the 3rd respondent herein, for grant of subsidy for transportation of goods outside the State also. The 3rd respondent accepting the recommendation of the 4th respondent, in his letter to the Government dated 16-09-1994, recommended for grant of subsidy to the petitioner – Company for transportation of goods outside the State. The Government of undivided State of Madhya Pradesh, the 1st respondent herein, represented by its Secretary, Department of Finance, the 2nd respondent herein, in the light of the recommendations of respondents 3 and 4, accepted the claim of the petitioner – Company for grant of subsidy for transportation of goods outside the State and directed payment of transport subsidy to the petitioner – Company vide its order dated 16-12-1994. Accordingly, the 2nd respondent directed the 3rd respondent to pay the transport subsidy to the petitioner – Company. It is also stated that another Company, M/s Rudra Cement Ltd. had raised its claim for transport subsidy towards transportation of goods outside the State, and accepting the claim of that Company, the Government

81

paid transport subsidy to that Company even with regard to transportation of goods outside the State.

**(4)** Notwithstanding the order / direction of respondents 1 and 2 dated 16-12-1994, the transport subsidy was not paid to the petitioner – Company despite several representations made by the petitioner – Company to the respondents from time to time. It is stated that the TSS remained in force until 1996 -97.

**(5)** The claim of the transport subsidy under the TSS had to be paid by the respondents from out of the Grant No. 41, Budget Head 2852, Industries 796 – Tribal Area, Sub- plan 006- Transport Subsidy (Plan) of the Budget. There was no fund available in the above Grant No. 41. The respondents did not pay Rs.43,35,451/- claimed by the petitioner - Company towards transport subsidy.

**(6)** According to the petitioner – Company, out of the said sum of Rs.43,35,451/-, sum of Rs.8,44,747/- was deducted on the ground that sum of Rs.8,44,747/- was paid in excess to the petitioner – Company in earlier subsidy bills, and in that view of the matter, the 4th respondent by his letter dated 25-05-1995 recommended payment of Rs.34,90,704/- only, and a copy of that letter is produced as Annexure –P/8. It is stated that respondents 2 to 4, from time to time, sought funds from the State Government for payment of claim of transport subsidy of the petitioner – Company. The 3rd respondent vide his letter dated 15-12-1997 addressed to the Government sought for allocation of necessary funds for payment of transport subsidy to the petitioner – Company, but, the Government did not release any fund. A copy of that letter dated 15-12-1997 is also produced as Annexure-P/9.

(7) In the circumstance, the petitioner – Company filed this writ petition in the Madhya Pradesh High Court on 01-05-1998 for a writ of mandamus to the State Government to provide funds in Grant No.41, Budget Head No.2852, Industry No.796 – Tribal Area, Sub-plan 006-Transport Subsidy (Plan) and for a direction to the respondents 2 to 4 to release transport subsidy claimed by the petitioner – Company.

(8) The respondents contested the writ petition by filing return dated 06-04-2000. The main contention advanced in the return is that the order of the Government dated 16-12-1994 was subsequently found to be illegal and therefore, the Government cancelled the same by issuing another order dated 23-06-1999 and, therefore, the very basis of the claim of the petitioner – Company is non-existent and in that view of the matter, the petitioner – Company is not entitled to transport subsidy. It is contended that the order dated 16-12-1994 was issued in violation of the mandatory provisions of Rules of Business governing the exercise of powers conferred on the Government by clauses (2) and (3) of Article 166 of the Constitution of India. It was contended by the respondents that since the order of the Government dated 23-06-1999 was not challenged, that order is binding on the petitioner – Company. Secondly, it was contended that the TSS had come to an end on 25-11-1989 and this fact was not disclosed by the petitioner – Company deliberately. With regard to the payment of transport subsidy to M/s Rudra Cement Ltd., it is stated that the Government having realized that the transport subsidy was wrongly paid to the said company, a notice was issued on 05-08-1999 to the said company for recovery of the payment of transport subsidy wrongly made. The petitioner – Company field its rejoinder dated 06-07-2000 to the above return of the respondents. In the

83

rejoinder, it is stated that the Government order dated 23-06-1999 is an after-thought to defeat the legitimate claim of the petitioner and in fact, the Government had no legal authority to cancel the order made by it earlier on 16-12-1994 directing payment of transport subsidy in term of the TSS. It is contended that the respondents are bound by the **"principles of promissory estoppel"** and **"legitimate expectation"** and they cannot go back on their promise made in the order dated 16-12-1994. Meeting the contention of the respondents that the TSS was in currency only until 25-11-1989, it is contended by the petitioner – Company that as per the letter of the 3rd respondent dated 15-12-1997 itself marked as Annexure-P/6, the TSS was in existence till the year 1996 – 97 and, therefore, what is stated in the letter dated 25-11-1989, marked as Annexure- R-III, relied upon by the respondents being prior to the letter of the 3rd respondent dated 15-12-1997 is factually incorrect.

**(9)** The petitioner – Company filed I.A. No.2608 of 2000 for amendment of the writ petition in the light of the subsequent events - the Government order dated 23-06-1999 reversing its earlier decision to pay transport subsidy to the petitioner – Company and the refusal of the respondents to pay transport subsidy. By way of amendment, the petitioner – Company sought quashing of the Government order dated 23-06-1999 in addition to the other prayers made in the writ petition. It also sought to take grounds based on the principles of 'legitimate expectation' and 'promissory estoppel'. It also sought to raise the ground that the order of the Government dated 23-06-1999 is a nullity in the eye of law, because, no notice was issued to the petitioner – Company before passing that order. I.A. No.2608 of 2000 was ordered by the

Court on 31-03-2006. Learned counsel for the petitioner has carried out the amendments in the body of the writ petition.

**(10)** The writ petition was heard for final disposal on 31-03-2006 and 13-04-2006.

**(11)** Shri B.P. Sharma, learned counsel for the petitioner contended that the respondents having solemnly promised the petitioner – Company to reimburse the transportation charges in terms of the TSS and in the light of the Government order dated 16-12-1994 directing payment of transport subsidy, the respondents cannot go back upon their promise and refuse to pay transport subsidy due to the petitioner – Company. It was contended by the learned counsel that the principles of promissory estoppel and legitimate expectation are attracted and the respondents are under a legal obligation to pay transport subsidy as promised by them under the TSS. Attacking the Government order dated 23-06-1999, it was contended that that order is *ex facie* illegal and the one made in utter violation of the principles of natural justice. It was pointed out that the Government before passing the order dated 23-06-1999 cancelling its earlier order dated 16-12-1994, did not issue any notice to the petitioner – Company to have its say in the matter. Alternatively, it was contended that the reasons given by the Government to cancel the order dated 16-12-1994 are factually incorrect. It was contended that the Rules of Business governing the exercise of the power under clauses (2) and (3) of Article 166 of the Constitution were not violated while issuing the Government order dated 16-12-1994 as alleged by the respondents in their return. Furthermore, it was contended that even assuming that the Government order dated

16-12-1994 was not issued in perfect conformity with the provisions of Clauses (1) and (3) of Article 13 of the Constitution, even then, the Government order dated 16-12-1994 is not vitiated on that count for the provision of Article 168 is only directory and not mandatory. Shri B.P. Sharma meeting with the contention of the respondents that while issuing certificate (Annexure-P/2) by the 4th respondent certifying that the petitioner – Company is entitled to Rs.43,35,451/- towards transport subsidy, the fact that the transport subsidy would be calculated on the basis of the distance between the actual location of the industrial unit and Rail Head was not taken into account, would submit that that contention is untenable. It is pointed out that the petitioner – Company has claimed only the actual freight charges / transport charges from the factory outlet to and from the Raipur Rail Head which is the Rail Head as provided under the TSS. Shri Sharma would draw my attention to Annexure-P/8 which is a chart showing the computed charges / tariff settled and existing at the relevant periods from 1986 to 1991 as certified by the Railways and incurred by the petitioner – Company for the transport of goods to and from the factory outlet to the Raipur Rail Head.

**(12)** Shri Yashwant Singh, learned Govt. Advocate, for the respondents, *per contra*, while supporting the impugned actions of the respondents would highlight that the entire claim of the petitioner – Company is based on the Government order dated 16-12-1994 and since that order was subsequently cancelled by the Government vide its order dated 23-06-1999, the very basis of the claim disappears and, therefore, the petitioner – Company is not entitled to transport subsidy under the TSS. It was contended by the learned Govt. Advocate that the reasons stated by the Government to cancel its earlier order dated

16-12-1994 are valid and tenable. It was contended that while issuing the order dated 16-12-1994 the mandatory provisions of Article 168 of the Constitution were not adhered to. It was next contended by learned Govt. Advocate that the TSS was in currency between 01-04-1978 and 01-05-1989 only, whereas, the claim put forth by the petitioner – Company relates to the period between 18-10-1986 and 17-10-1991 and, therefore, under no circumstance, the petitioner – Company is entitled to transport subsidy after the TSS was scrapped/withdrawn on 25-11-1989. Meeting the contention of the learned counsel for the petitioner that the respondents are guilty of practising invidious discrimination in the matter of paying transport subsidy, it was pointed out by the learned Govt. Advocate that though the transport subsidy was paid to M/s Rudra Cement Ltd. with regard to the transportation of goods outside the State, the Government realizing the mistake, had subsequently issued notice to that Company to refund transport subsidy wrongly paid to it.

**(13)** Having heard learned counsel for the parties, the question that arises for decision is whether the respondents are duty bound to pay transport subsidy under the TSS to the petitioner – Company for a period of five years between 18-10-1986 and 17-10-1991 and whether the Government order dated 23-06-1999 is valid and legal.

**(14)** I think that the contentions of the learned counsel for the petitioner-Company that the principles of 'promissory estoppel' and 'legitimate expectation' are attracted to the facts of this case and respondents cannot be permitted to go back on their promise are well-founded. The basic facts are not in dispute. After the Government

framed the TSS with effect from 01-04-1978 to promote industrial growth and development in Bastar and Surguja Districts, the petitioner established its Cement Plant in Pandripani village, Tahsil Jagdalpur, District Bastar and it commenced its commercial production with effect from 18-10-1986. The relevant Rules for Transport Subsidy Scheme, as approved and issued under the Government of Madhya Pradesh, Commercial and Industries Department Memo No.F16/23/77/B-11 dated 11-04-1978, produced as Annexure-R-II by the respondents themselves along with their return, read as follows:

"RULES FOR TRANSPORT SUBSIDY SCHEME

1. Short title.

This scheme may be called the M.P. Transport Subsidy Scheme, 1978.

2. Commencement and duration.

It comes into force with effect from 1st April, 1978 and will operate for a period of 5 years.

(टीप:–वाणिज्य एवं उद्योग विभाग के ज्ञापन क्र.9902/6390/11/ब दिनांक 1.9.85 द्वारा उक्त योजना को सातवीं पंचवर्षीय योजना में निरंतर रखने की स्वीकृति प्रदान की गयी)

3. Applicability.

It is applicable to all Industrial units (barring plantations, refineries and power generating units) except those in the central public sector irrespective of their size, in the districts of Bastar and Sarguja in the State.

4 .Definitions.

(a) Industrial unit – means an industrial unit where a manufacturing programme is carried on.

(b) New industrial unit-means an Industrial unit, which has set up manufacturing capacity and commences production on or after the date of commencement of this scheme.

(c) Selected areas-means the district of Bastar and Sarguja.
(excluding tehsils of Manendragarh and Baikunthpur of Sarguja distt.)

(d) Raw material-means any raw material actually required and used by an industrial unit in its manufacturing programme as approved by the Government of India/and/or by the State Government.

(e) Finished goods-means the gods actually produced by an industrial unit in accordance with the manufacturing programme approved by the Government of India and/or the State Government.

5. Area covered by the Scheme.
The Scheme is limited to the industrial units located in the selected areas only.

6. Details of the Scheme.
"(6) (i) A transport subsidy will be given to new industrial units located in selected areas for a period of five years from the date the unit goes into production in respect of raw materials which are brought into and finished goods wich are taken out of such area."

(ii) industrial units will not be eligible for transport subsidy for raw materials obtained from within the district and finished goods delivered within the district.

(iii) Transport subsidy will be calculated on the basis of the distance between the actual location of the factory and railhead indicated for the tehsils of the selected districts.

(iv) The railhead for the computation of the distance will be as below:-

| District | Tehsils | Railhead |
|---|---|---|
| 1. Bastar | All Tehsils | Raipur |
| 2. Sarguja | Bharatpur (Janakpur) | Shahadol |
| | Surajpur | Surajpur Road |
| | Pal | Gerwa Road |
| | Samri | Gerwa Road |
| | Ambikapur | Bisrampur |

(v)The Director of Industries in consultation with the Collector of the concerned district shall determining the freight charges for road transport by year. in the absence of any such determination during a particular year, the rates fixed during the previous year shall apply.

(vi) The subsidy will be payable on the difference between the national railway freight as determined on the basis of (ii) and the road transport freights as fixed in para (v) irrespective of the actual mode of transportation, provided and road transport freight is higher.

(वाणिज्य एवं उद्योग विभाग के ज्ञापन क्रमांक 16/3/86/11/ब दिनांक 20.3.86/24.3.86 द्वारा नियम 6 (vi) को निम्नानुसार संशोधन किया गया:–

"6 (vi) वैकल्पिक रेल भाड़े, एवं सड़क परिवहन भाड़े (उद्योग आयुक्त द्वारा वार्षिक आधार पर निश्चित दी गई दर पर) अथवा इकाई द्वारा वास्तविक रूप से दी गई, भाड़े की राशि, जो भी कम हो, का अंश का अंतर अनुदान के रूप में देय होगा ।"

(vii) Cost of loading or unloading and other handling charges such as at the railway station and at factory site of the industrial unit will not be taken into account for the purpose of determining transport costs.

(viii) Transport subsidy will also be payable for movement of machinery and spares for new industrial units.

(ix) In order to check any misuse of transport subsidy, the Director of Industries will carry out periodical checks to ensure that the raw materials, finished goods and machinery and spares in respect of which transport subsidy has been given were actually used for the purpose by verification of consumption of the raw materials, and the output of the finished foods and the log books for machines.

(x) Separate registration for transport subsidy will not be necessary but the industrial unit desirous of availing transport subsidy will inform the District Industries Officer and the Addl. Director of Industries, Bhilai of his intention of doing so giving details of the scheme well before the date from which the subsidy is proposed to be claimed.

(xi)Director of Industries will make arrangements not only for the timely scrutiny of the claims for transport subsidy but also arrange for prompt payment of the claims. Normally, a transport subsidy claim may be preferred by an industrial unit for the half year beginning from April. The sanctioning authority may, at his discretion, entertain more than one claim if financial position of the industrial unit so warrants. The claims will be submitted within one month of the close of the half year. The claim for transport subsidy, complete in all respects will be submitted in for 'A' to the distt. Industries Officer concerned, who will verify and forward the same within three weeks of its receipt in his office, to the Addl. Director of Industries, Bhilai. After proper scrutiny, the Addl. Director of Industries will sanction the subsidy claim within two weeks of receipt of the claim proposal in his office. The disbursement of subsidy will be made by the district Industries Officer

concerned within 15 days of the date of issue of sanction."

Since the petitioner-Company established its Cement plant in Pandiripani village, Tahsil Jagdalpur, District Bastar, when the TSS was in currency and it commenced its commercial production on 18-10-1986, in terms of Rule 6(i) of the Rules for Transport Subsidy Scheme, the petitioner-Company is entitled to transport subsidy for a period of five years from 18-06-1986. In other words, the petitioner-Company is entitled to claim transport subsidy for the period from 18-10-1986 to 17-10-1991. After the cement plant commenced its commercial production with effect from 18-10-1986, in pursuance of the representation made by the petitioner-Company, the Government of undivided State of Madhya Pradesh represented by the Secretary, Department of Finance, passed the order on 16-12-1994 granting subsidy under the TSS to the petitioner-Company in the light of the recommendations of respondents 3 and 4. Even the subsequent events to which reference is made supra would go to show that even after 16-12-1994 the respondents 2 to 4, from time to time, made representations to the State Government for releasing the necessary fund to pay transport subsidy to the petitioner-Company and similarly circumstanced others. For example, the third respondent vide his letter dated 15-12-1997 addressed to the Government sought for allocation of necessary funds for payment of transport subsidy to the petitioner-Company. As pointed out supra, this writ petition was filed in the High Court of Madhya Pradesh on 01-05-1998. Only thereafterwards, the Government of Madhya Pradesh passed the impugned order dated 23-06-1999 cancelling its earlier order dated 16-12-1994 on the ground that the Government order dated 16-12-1994

was issued without complying with the provisions of Clauses (2) and (3) of Article 166 of the Constitution of India. At this stage itself, it needs to be noticed that the Government issued the order dated 23-06-1999 cancelling its earlier order dated 16-12-1994 without issuing any notice to the petitioner-Company to have its say in the matter. The affected should be appraised is a Constitutional creed flowing from Article 14 of the Constitution of India. It is needless to state that under the Govt. order dated 16-12-1994, the petitioner-Company had acquired the right to claim transport subsidy for the period 18-10-1986 to 17-10-1991. The right accrued to the petitioner – Company under the Govt. order dated 16.12.1994 should not have been taken away by the Govt. by issuing the order on 23-6-1999 without hearing the petitioner-Company. Only on that short ground, the Govt. order dated 23-6-1999 is liable to be quashed for utter violation of the principles of natural justice and fair play in action. Even otherwise, in my considered opinion, the Govt. order dated 23-6-1999 is ex *facie* arbitrary, unreasonable and is opposed to the principles of 'promissory estoppel' and 'legitimate expectation' for the reasons to be stated presently.

**(15)** The basis for the Government to pass the order dated 23.6.1999 canceling its earlier order dated 16.12.1994 is that the Government order dated 16.12.1994 was issued in violation of the Clauses (2) & (3) of Article 166 of the Constitution of India. That ground is stated by the respondents in para 4 of the return. We have perused that defense raised by the respondents in para 4 of their return. It is as vague as it could be. Except stating that "mandatory provisions of the Rules of Business so framed while exercising the powers conferred by clauses (2) & (3) of Article 166 of the Constitution of India were given a

complete goby while issuing the order dated 16.12.1994", the respondents have not given details as to which Rules of Business made by the Governor on the advise of his Council of Ministers under Article 166 have been violated. Even during the course of arguments, learned counsel for the respondents was not in a position to point out violation of any specific Rules of Business except vaguely stating that the Government order dated 16.12.1994 was issued in violation of Rules of Business. Therefore, the above contention was required to be noticed only to be rejected. Clause (1) of Article 166 of the Constitution requires that all executive action of a State Government shall be expressed to be taken in the name of the Governor. It does not require any particular formula of words for compliance with Clause (1) of Article 166. What the Court has to see is whether the substance of its requirements has been complied with. A Constitution Bench of the Apex Court in **Chitralekha R. Vs. State of Mysore**[1] held that the provisions of Article 166 were only directory and not mandatory in character and if they were not complied with, it could still be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor. Clause (1) of Article 166 does not prescribe how an executive action of the Government is to be performed; it only prescribes the mode in which such act is to the expressed. While Clause (1) relates to the mode of expression, Clause (2) lays down the ways in which the order is to be authenticated. Whether there is any Government order in terms of Article 166 has to be adjudicated from the factual background of each case. Furthermore, in **State of U.P. Vs. Om Prakash Gupta**[2], the Supreme

---

1. AIR 1964 SC 1823 : (1964) 6 SCR 368
2. AIR 1970 SC 679 : (1969) 3 SCC 775

Court held that the Rules of Business made under Article 166(3) of the Constitution are merely directory, so that substantial compliance with them is sufficient.

**(16)** In the instant case the respondents have not shown how the Government order dated 16.12.1994 is not in conformity with the Rules of Business framed by the Governor under Article 166 (3) of the Constitution except making very vague and bald statement that there is violation of the Rules of Business.

**(17)** Next, it needs to be noticed that the Government order dated 23.6.1999 was issued only after the petitioner filed this writ petition in this court on 1.5.1998. That clearly shows that by passing the impugned order dated 23.6.1999, the Government wanted to avoid its liability to pay transport subsidy to the petitioner-Company. The Government order dated 23.6.1999, therefore, smacks of arbitrariness, unreasonableness and dishonest intention to avoid its liability to pay transport subsidy to the petitioner in terms of TSS. In that view of the matter, the Government order dated 23.6.1999 is liable to be condemned as opposed to the postulates of Article 14 of the Constitution.

**(18)** The principle of promissory estoppel has been evolved by courts, on the principle of equity, to avoid injustice. The principle of promissory estoppel is that where one party has by his words or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal solutions or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it in fact so acted upon by the other party, the promise or representation

would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to dealings which have taken place between the parties. The doctrine of promissory estoppel is now well established in the field of administrative law. Section 115 of the Evidence Act is also more or less, couched in a language which conveys the same expression. However, even where the case does not fall under Section 115 of the Evidence Act, promissory estoppel can still be invoked. The essence of the doctrine is that a man should keep his words, all the more so when the promise is not a bare promise but is made with the intention that the other party should act upon it. In other words, a promise intended to be binding, intended to be acted upon, and in fact acted upon is binding. The doctrine of promissory estoppel has come to stay one of the well-recognized grounds of judicial review of administrative action. It is now well settled that the doctrine of promissory estoppel applies equally to Government and public authorities.

**(19)** The doctrine of "promissory estoppel" has assumed importance in recent years. The leading case on the subject is **Central London Property Trust Ltd. Vs. High Trees House Ltd.**[3] The rule laid down in **High Trees** Case (Supra) again came up for consideration before the King's Bench in **Combe Vs. Combe**[4] wherein the Court ruled that the principle stated in **High Trees** Case (Supra) is that, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him

---

3. (1947) 1 KB 130 : 175 LT 332
4. (1951) 2 KB 215 : (1951) 1 All ER 767 (CA)

at his word and acted on it, the party who gave the promise or assurance cannot afterwords be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him , but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported, in point of law by any consideration, but only by his word. The principle enunciated in **High Trees** Case (Supra) was also recognized by the House of Lords in **Tool Metal Mfg. Co. Ltd. Vs. Tungsten Electric Co. Ltd.**[5]. The principle enunciated in **High Trees** Case (Supra) was adopted by the Apex Court in **Union of India Vs. Anglo Afghan Agencies**[6] and **Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd.**[7].

**(20)** "Promissory estoppel" is defined in *Black's Law Dictionary* as an estoppel "which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on part of promisee, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise".

**(21)** In **Century Spg. and Mfg. Co. Vs. Ulhasnagar Municipality**[8] where the Municipality had agreed to exempt the then existing industrial concerns in the area from octroi duty for a period of seven years. Acting on the representation of the Municipality the industrial concerns expanded their business. However, later on the municipality sought to impose duty. This was challenged by the industrial concern. The Supreme Court while remanding the case to the High

---

5. (1955) 2 All ER 657 : (1955) 1 WLR 761 (HL)
6. AIR 1968 SC 718 : (1968) 2 SCR 366
7. (1972) 1 SCC 857
8. (1970) 1 SCC 582 : AIR 1971 SC 1021

Court, held that where a private party has acted upon the representation of a public authority, it could be enforced against the authority on the ground of equity in appropriate cases even though the representation did not result in a contract owing to the lack of proper form prescribed by Article 299 of the Constitution.

**(22)** The whole law relating to the application of promissory or equitable estoppel against the Government and public authority was considered in depth and great elaboration by the Supreme Court in **Motilal Padampat Sugar Mills Vs. State of U.P.**[9]. In this case, the appellant was a limited company. On October 10, 1968, a news item appeared stating that the respondent – State had decided to give exemption from sales tax for a period of three years under Section 4-A, Uttar Pradesh Sales Tax Act, 1948 to all new industrial units in the State. On October 11, 1968 the appellant wrote to the Director of Industries stating that in view of the sales tax holiday announced by the Government, the appellant desired to setup a plant for the manufacture of Vanaspati and sought confirmation of the exemption. The Director of Industries confirmed the position. An assurance to the same effect was given by the Chief Secretary, Government of Uttar Pradesh. In view of these assurances the appellant went ahead with the setting up of the factory. In May 1969, the State Government had second thoughts on the question of exemption and requested the appellant to attend a meeting. At the meeting the appellant's representative reiterated that the respondent-Government had already granted exemption from sales tax and that on the basis of the assurance, the appellant had proceeded with the work of setting up the factory. The State Government, however, on

---

9. (1979) 2 SCC 409 : 1979 SCC (Tax) 144

January 20, 1970, took a policy decision that new Vanaspati units which went into commercial production by September 30, 1970, would be given partial concession of sales tax. The appellant's factory went into production on July 2, 1970 but the State Government once again changed its policy and on August 12, 1970 intimated its decision to rescind the concessions. The High Court dismissed the writ and rejected the plea of promissory estoppel against the Government. The Supreme Court, allowing the appeal, held that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relation or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made, and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.

**(23)** For attracting the doctrine of promissory estoppel what is necessary is only that the promisee should have altered his position in relying on the promise. It is not necessary that he should suffer any detriment as well. The law of consideration as applicable in contracts cannot be attracted in the matter of promises made by the State and other public authorities. The law laid down in **Motilal Padampat Sugar Mills**[9] (Supra) was reiterated and reinforced by the Supreme Court in **Union of India Vs. Godfrey Phillips India Ltd.**[10] and **Express**

---

10. (1985) 4 SCC 369 : 1986 SCC (Tax) 11

**Newspapers Pvt. Ltd. Vs. Union of India**[11]. The same point was further explained by the Court in **Delhi Cloth and General Mills Vs. Union of India**[12] where it held that alteration in position by acting on the assurance or representation is enough and consequent detriment, damage or prejudice to the promisee is not to be proved. It was also held that it is immaterial whether such representation wholly or partially responsible for such alteration in the position. Furthermore, the Supreme Court observed that the concept of detriment is not monetary loss but whether it appears unjust, unreasonable or inequitable that the promisor should be allowed to resile from the assurance or representation having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation. Applying the above principle the Supreme Court in **Bhim Singh Vs. State of Haryana**[13] estopped the Government from going back on its promises made to the employees on the basis of which they shifted to another department. The Supreme Court held that the appellants theirin having believed the representation made by the State and having further acted upon cannot be defeated of their hopes which have crystallized into rights by virtue of the doctrine of promissory estoppel and, therefore, the State is bound to confer such rights and benefits as were promised by it in entirety.

**(24)** In the backdrop, it is trite to state that the doctrine of promissory estoppel is attracted to the facts of this case. The Government and the other respondents authorities having solemnly made representation to the petitioner-Company under the TSS to pay transport subsidy if persons established industrial units in Bastar and

---

11. (1986) 1 SCC 133 : AIR 1986 SC 872
12. (1988) 1 SCC 86
13. **(1981) 2 SCC 673 : AIR 1980 SC 768**

Surguja districts and having passed the order dated 16/12/1994 directing payment of transport subsidy to the petitioner-Company and since the petitioner-Company has acted upon the representation and established cement plant, the respondent authorities are duty-bound by virtue of the doctrine of promissory estoppel to pay transport subsidy to the petitioner-Company. The defence put forth by the respondents to resile from their promise vide order dated 16/12/1994, to say the least, is totally arbitrary and unreasonable.

**(25)** The other reason stated by the respondents to refuse payment of transport subsidy to the petitioner-Company is that the TSS had come to an end on 25/11/1989. This defence is again untenable for more than one reason. Firstly, as per Annexure-P/6 which is a letter dated 15/12/1997 written by the third respondent to the Government would show that the TSS was in currency till the year 1996-97. Secondly, it needs to be noticed that below Rule 2 of the Rules for Transport Subsidy Scheme, in the note, it is stated that as per the Circular of the Department of Commerce and Industries, Government of Madhya Pradesh dated 01/09/1985, the TSS would continue during Seventh Five Year Plan also. This note would falsify the assertion of the respondents in the return that the scheme was in existence only up to 25/11/1989. Thirdly, it needs to be noticed that admittedly, the petitioner-Company established cement plant taking advantage of the TSS and it commenced its commercial production on 18/10/1986 when the TSS was in currency. In terms of Rule 6(i) of the Rules for TSS, transport subsidy is required to be paid to the new industrial units located in selected areas for a period of five years from the date the units go into production. Even assuming that after the establishment of the industrial unit and the same

went into commercial production with effect from 18.10.1986, the TSS was withdrawn or scrapped, that fact itself would not disentitle the industrial units which were established and which went into commercial production before the TSS was scrapped or withdrawn. In other words, although the industrial units which were established and which went into commercial production during the currency of TSS are entitled to claim transport subsidy in terms of Rule 6 (i) of the Rules for TSS for a period of five years from the date the units went into production regardless of the fact whether the TSS was in currency or not for a period of five years from the date of commercial production.'

**(26)** Above all, the impugned action of the respondents to refuse to pay transport subsidy in terms of the Rules for TSS and cancelling its earlier order dated 16.12.1994 smacks of arbitrariness, unreasonableness and unfairness. In other words, the impugned actions of the respondents violate the postulates of Article14 of the Constitution of India.

**(27)** The doctrine of "legitimate expectation" is also applicable to the facts of this case. The doctrine of legitimate expectation is rooted in Article 14 of the Constitution which abhors arbitrariness and insists on fairness in all administrative dealings. The doctrine of legitimate expectation has now gained importance in administrative law as a component of natural justice, non-arbitrariness and Rule of law. It aims at checking the growing abuse of administrative power as a supplement to the principles of natural justice, unreasonableness, fiduciary duty of administrative authorities. The doctrine of legitimate expectation belongs to the domain of public law and is intended to give relief to the people

when they are not able to justify their claims on the basis of law in the strict sense of the terms though they had suffered a civil consequence because their legitimate expectations has been violated or frustrated. The doctrine of legitimate expectation is the latest discovery of the Indian Law and that has been viewed as one of the grounds of judicial review, and it has assumed the position of a significant doctrine of Public Law in almost all jurisdictions to check misuse or abuse of public power. The Supreme Court in **Punjab Communications Ltd Vs. Union of India**[14] held that the legitimate expectation may be procedural or substantive or both. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before any change in decision is made. The substantive part of the doctrine relates to the representation that a benefit of a substantive nature will be granted or will be continued. Procedural legitimate expectation cannot be withdrawn without giving a person concerned some opportunity of advancing reason for contending that it should not be withdrawn. Similarly, substantive expectation cannot be withdrawn unless some rational grounds for withdrawing it has been communicated to the person concerned and on which he has been given an opportunity to comment. The principle of legitimate expectation in the substantive sense mandates that the decision-making authority can normally be compelled to give effect to it or his representation unless overriding public interest demands otherwise. In **Dr. Chanchal Goyal (Mrs.) Vs. State of Rajasthan**[15], Supreme Court held that the principle at the root of the doctrine of legitimate expectation is the Rule of Law which requires regularity, predictability and certainty in the Governments' dealings with

---

14. (1999) 4 SCC 727
15. (2003) 3 SCC 485.

the public and expectation could be based on an express promise, or representation or by established past action or settled conduct. It could be a representation to the individual or generally to a class of persons.

**(28)** It was the legitimate expectation of the petitioner- Company that if it established industrial unit in Bastar and Surguja districts, the Government would pay transport subsidy in terms of the TSS. The expectation of the petitioner-Company arose from the representation made by the State Government under the TSS. It is well settled that the "legitimate expectation" gives the petitioner sufficient *locus standi* and cause of action for judicial review. The Supreme Court in a recent judgment speaking through His Lordship, **Arijit Pasayat**, J. in **Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others**[16], defined the contours of application of the doctrine of legitimate expectation as a ground of judicial review in the following words:

> "8. A person may have a "legitimate expectation" of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. It is generally agreed that "legitimate expectation" gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine

---

16. (2005) 1 SCC 625

does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then the decision-maker should justify the denial of such expectation by showing some overriding public interest.

9. While the discretion to change the policy in exercise of the executive power, when not trammeled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validity for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness."

**What is observed by the Hon'ble Apex Court in paragraphs 8 and 9 are very guiding and binding principles to denounce the Government's action in resiling from its promise/representation made in the TSS as well as in its order dated 16/12/1994 as unreasonable and arbitrary. The respondents have utterly failed to show any overriding public interest to retract from its promise. The order of the Government dated 23/06/1999 is intended only to deny the legitimate claim of the petitioner-Company and it is not actuated by any overriding public interest.**

**(29)** In **State of Kerala Vs. K.G. Madhavan Pillai**[17] the Government had issued a sanction to the respondents to open a new unaided school and to upgrade the existing ones. However, after fifteen days a direction was issued to keep the sanction in abeyance. This order was challenged on the ground of violation of the principles of natural justice. The Court held that the sanction order created legitimate expectation in the respondents which was violated by the second order without following the principles of natural justice which is sufficient to vitiate an administrative order. The law laid down in this case squarely applies to the facts of this case. In this case also, the Government has withdrawn its promise made in the TSS and the order dated 16/12/1994 by issuing the order dated 23/06/1999 without issuing any notice to the petitioner-Company to have its say in the matter and thereby violating the principles of natural justice and fair play in action.

**(30)** In **SC and WS Welfare Association Vs. State of Karnataka**[18], the Government had issued a notification notifying areas where slum clearance scheme would be introduced. However, the notification was subsequently amended and certain areas notified earlier were left out. The Supreme Court held that the earlier notification had raised legitimate expectation in the people living in an area which had been left out in a subsequent notification. Hence, legitimate expectation cannot be denied without a fair hearing. This judgment is a binding authority to state that where a person has legitimate expectation to be treated in a particular way which falls short of an enforceable right, the administrative authority cannot deny him his legitimate expectation

---

17. (1988) 4 SCC 669 : AIR 1989 SC 49
18. (1991) 2 SCC 604

without a fair hearing.

**(31)** In **Navjyoti Coop. Group Housing Society Vs. Union of India**[19], the Development Authority, without notice and hearing, had changed the order of priority for the allotment of land to cooperative societies from 'serial number of registration' to the 'date of approval of list of members'. The Supreme Court while quashing that order on the ground of violation of legitimate expectation held that where persons enjoying certain benefits or advantage under old policy of Government derive a legitimate expectation even though they may not have any legal right under private law in regard to its continuance but before changing that policy affecting adversely that benefit or advantage, the aggrieved persons are entitled to a fair hearing. This judgment also fully supports the case of the petitioner-Company in this case.

**(32)** The Supreme Court in **Union of India Vs. Hindustan Development Corpn**[20] laid down the meaning and scope of the doctrine of legitimate expectation in the following words:

> "Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purpose, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure

---

19. (1992) 4 SCC 477
20. (1993) 3 SCC 499

> followed in a natural and regular sequence. Again it is distinguishable from a mere expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and, therefore, it does not amount to a right in a conventional sense."

**(33)** In view of what is stated above, it becomes imperative for the respondents to pay transport subsidy to the petitioner-Company in terms of the TSS.

**(34)** The contention of the petitioner that the respondents are also guilty of practicing invidious discrimination in the matter of paying transport subsidy to Industrial Units established under the TSS is also well-founded. Admittedly, the respondents have paid transport subsidy to M/s. Rudra Cement Ltd. with regard to the transportation of the goods outside the State, but, the respondents have refused to pay transport subsidy to the petitioner-Company with regard to the transportation of goods outside the State. Thus, it is a clear case of discrimination. Article 14 guarantees equal protection. Equal protection means the right to equal treatment in *similar circumstances,* both in the privileges conferred and in the liabilities imposed. Since the guarantee of equal protection embraces the entire realm of 'State action', it would extend not only when an individual is discriminated against in the matter of exercise of his rights or in the matter of imposing liabilities upon him, but also in the matter of granting privileges, *e.g.*, granting licences for entering into a business, inviting tenders for entering into a contract relating to the Government business, or issuing quotas, giving jobs etc. Article 14 guarantees that there should be no discrimination between one person and another if as regards the subject-matter concerned, their

position is the same. In other words, the State's action must not be arbitrary but must be based on some valid principle which itself must not be irrational or discriminatory. In the instant case, it needs to be noticed that the petitioner-Company and M/s. Rudra Cement Ltd. are similarly circumstanced for the purpose of Article 14 and, therefore, the petitioner-Company is entitled to the similar treatment which is meted out by the respondents to the said M/s. Rudra Cement Ltd.. Therefore, I hold that the refusal of the respondents to pay transport subsidy to the petitioner-Company tantamounts to invidious discrimination prohibited by Article 14 of the Constitution.

**(35)** The learned counsel for the petitioner contended that the transport subsidy ought to have been paid to the petitioner-Company immediately after its unit went into commercial production on 18/10/1986; the Government did not respect its own representation/promise and did not pay transport subsidy notwithstanding several representations made by the petitioner-Company and notwithstanding its own order dated 16/12/1994 and the recommendations made by the respondents 3 and 4 from time to time to pay transport subsidy and to provide necessary budget for the said purpose. Therefore, it was prayed by the learned counsel for the petitioner-Company to award reasonable interest also for the inordinate delay in paying transport subsidy.

**(36)** I have perused the writ petition and other pleadings filed by the petitioner. The petitioner has not specifically prayed the Court to award interest on delayed payment of transport subsidy. However, it is well settled that even in the absence of specific prayer in the writ

petition, the Court having regard to the facts and circumstances of the case and on equitable grounds can mould the relief if justice requires such a course of action. Here is a case where the Unit established by the petitioner-Company went into commercial production on 18/10/1986 and it was entitled to claim transport subsidy for a period of five years as per Rule 6(i) of the Rules for TSS from the date the unit went into commercial production. In that view of the matter, the Government ought to have paid transport subsidy when demand was made by the petitioner-Company. The petitioner is entitled to subsidy for a period of five years from 18-10-1986 to 17-10-1991.

**(37)** In **Executive Engineer, Dhenkanal Minor Irrigation Division Vs. N.C. Budhraj**[21], the majority speaking through Doraiswamy Raju, J has held that the basic proposition of law that a person deprived of the use of money to which he is legitiiately entitled has a right to be compensated for the deprivation by whatever name it may be called viz. interest, compensation or damages and this proposition is unmistakable and valid; the efficacy and binding nature of such law cannot be either diminished or whittled down. In that case, it was held that in the absence of anything in the arbitration agreement , excluding the jurisdiction of the arbitrator to award interest on the amount due under the contract, and in the absence of any other prohibition, the arbitrator can award interest. The Supreme Court has also observed that the interest is payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement .

---

21. (2001) 2 SCC 721

It was also held that interest in equity has to be paid at the market even though the deed or contract contains no mention of interest. This judgment of the Apex Court is an authority to state that even in the absence of contract between the parties, if the applicant is deprived of money to which he is legitimately entitled, he is entitled to claim interest at a reasonable rate. The principles of fairness, reasonableness and equity support such claim.

**(38)** In **Abati Benzbaruah Vs. Dy. Director General, Geological Survey of India and another**[22] His Lordship **Dr. A.R. Lakshmanan**, J in his concurrent judgment held thus:

> "Interest can be granted even if a claimant does not specifically plead for the same as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money which ought to have been paid to him."

In the same opinion, His Lordship was also pleased to observe that the rate of interest must be just and reasonable depending upon the facts and circumstances of each case and that it should be determined after taking into account all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time. Of course, those observations were made by the Court with regard to a claim for compensation arising under the provisions of Motor Vehicles Act, 1988, but, what is observed equally applies to other domains of monetary claims. In that case, the Court granted the interest at the rate of 9% per annum.

**(39)** In **Clariant International Ltd. and another Vs. Securities**

---

22. (2003) 3 SCC 148

& Exchange Board of India[23] also the Supreme Court held that interest can also be awarded on equitable considerations and upon establishment of the totality of circumstances justifying exercise of such equitable jurisdiction.

**(40)** The judgments of the Supreme Court noted above would clearly empower the Court to award interest at the reasonable rate even in the absence of contract between the parties to claim interest. In this case, the Government ought to have paid transport subsidy to the petitioner-Company for a period of five years from 18-10-1986 to 17-10-1991 or immediately thereafterwards. The respondents have withheld payment for more than fifteen years. In 1990s the rate of interest was very high, though in recent times the interest rate is reduced drastically by Reserve Bank of India. Therefore, taking into account the totality of the facts & circumstances of the case, the length of delay in paying the transport subsidy and conduct of the parties, I think that the interest at the rate of 9% per annum would be a just and reasonable rate and that would meet the ends of justice.

**(41)** In the result, I allow the writ petition and quash the Government order dated 23/06/1999. A direction shall issue to the respondents to pay Rs.34,90,704/- (Rupees Thirty four lakhs, ninety thousand, seven hundred and four) with interest at the rate of 9% per annum for the period from 17/10/1991 till payment. This direction shall be complied with by the respondents within a period of two months from today.

Sd/-
Chief Justice

---

23. (2004) 8 SCC 524